

## Internal Revenue Service

Department of the Treasury  
Washington, DC 20224

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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B04 – PLR-133041-07

Date:

December 11, 2007

### Legend:

Husband =

Wife =

Date 1 =

Trust =

Attorney =

Law Firm =

Date 2 =

a =

Year 2 =

Accountant =

Year 3 =

Company =

Individual =

Date 3 =

Date 4 =

y =

z =

Dear :

This is in response to a letter from your authorized representative dated July 18, 2007, and subsequent submissions, requesting an extension of time pursuant to § 2642(g) of the Internal Revenue Code and § 301.9100-3 of the Procedure and Administration Regulations to allocate the generation-skipping transfer (GST) exemptions of Husband and Wife (Taxpayers) to a transfer to Trust.

The facts and representations submitted are summarized as follows: On Date 1, Husband and Wife established an irrevocable trust (Trust) for the benefit of their lineal descendants. The trust agreement was drafted by Attorney, a partner with Law Firm, who had advised Taxpayers with respect to estate planning matters for over 10 years. Attorney drafted Trust to state in several provisions Taxpayers' intent that Trust would be exempt from GST tax. On Date 2, Taxpayers transferred a in cash to Trust.

In January of Year 2, Attorney reminded Husband that Taxpayers needed to file Forms 709 (United States Gift (and Generation-Skipping Transfer) Tax Return) in Year 2. Taxpayers relied on Attorney to ensure that Trust would carry out their intent to benefit their grandchildren and more remote descendants without incurring GST tax. Taxpayers did not know they had to allocate their GST exemptions. When Attorney reminded Husband about filing the Forms 709 in Year 2, Attorney did not inform either Taxpayer that it was necessary to file these returns to report the Date 2 transfer to Trust, to pay gift tax, and to allocate a portion of each Taxpayer's GST exemption to the Date 2 transfer to Trust. Attorney did not advise either Taxpayer that Trust would not be fully exempt from GST tax unless Taxpayers allocated portions of their GST exemptions to the Date 2 transfer on timely filed Forms 709. Husband stated that he would have Accountant prepare the returns. Attorney did not follow up with Husband or with Accountant to ensure that the returns were properly prepared and were filed. Husband forgot to ask Accountant to prepare these returns.

In Year 3, Taxpayers hired Company as their financial advisors. In gathering information, Individual at Company asked Attorney for copies of Taxpayers' gift tax returns reporting the Date 2 transfer. Neither Attorney nor Accountant could find copies of the returns in their files. A request for copies of the returns was sent to the Internal Revenue Service. In a Date 3 letter, the Internal Revenue Service responded that it had no record that the returns had been filed. On Date 4, Taxpayers filed Forms 709 prepared by Attorney to report the Date 2 transfer to Trust. Taxpayers elected gift-splitting and each paid gift tax of y and interest of z. The Internal Revenue Service has assessed penalties on these late returns. In preparing the returns, Attorney did not allocate Taxpayers' GST exemptions to the Date 2 transfer to Trust; instead, he advised Taxpayers to seek an extension of time to make the allocations.

Taxpayers have requested an extension of time under § 2642(g) and §§ 301.9100-1 and 301.9100-3 to allocate their GST exemptions to the Date 2 transfer to Trust.

Section 2601 imposes a tax on every generation-skipping transfer (GST). A GST is defined under § 2611(a) as (1) a taxable distribution, (2) a taxable termination, and (3) a direct skip.

Section 2631(a) provides that, for purposes of determining the GST tax, every individual shall be allowed a GST exemption of \$1,000,000 (adjusted for inflation under § 2631(c)) which may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor. Section 2631(b) provides that any allocation under § 2631(a), once made, shall be irrevocable.

Section 2632(a) provides that any allocation by an individual of his or her GST exemption under § 2631(a) may be made at any time on or before the date prescribed for filing the estate tax return for such individual's estate (determined with regard to extensions), regardless of whether such a return is required to be filed.

Section 26.2632-1(b)(2) of the Generation-Skipping Transfer Tax Regulations provides that an allocation of GST exemption to property transferred during the transferor's lifetime, other than in a direct skip, is made on Form 709.

Section 2642(b)(1) provides, in relevant part, that if the allocation of the GST exemption to any transfers of property is made on a timely filed gift tax return or is deemed to be made under § 2632(b)(1) or (c)(1), the value of such property for purposes of determining the inclusion ratio shall be its value as finally determined for gift tax purposes and such allocation shall be effective on and after the date of such transfer.

Section 2642(g)(1)(A) provides that the Secretary shall by regulation prescribe such circumstances and procedures under which extensions of time will be granted to make an allocation of GST exemption described in § 2642(b)(1). Such regulations shall include procedures for requesting comparable relief with respect to transfers made before the date of the enactment of § 2642(g)(1)(A), which was enacted into law on June 7, 2001.

Section 2642(g)(1)(B) provides that in determining whether to grant relief, the Secretary shall take into account all relevant circumstances, including evidence of intent contained in the trust instrument or instrument of transfer and such other factors as the Secretary deems relevant. For purposes of determining whether to grant relief, the time for making the allocation shall be treated as if not expressly prescribed by statute.

Section 2652(a)(2) and § 26.2652-1(a)(4) provide that, if, under section 2513, one-half of a gift is treated as made by an individual and one-half is treated as made by the spouse of the individual, then for purposes of the GST tax, each spouse is treated as the transferor of one-half of the entire value of the property transferred by the donor

spouse, regardless of the interest the electing spouse is actually deemed to have transferred under section 2513.

Notice 2001-50, 2001-34 I.R.B. 189, provides that under § 2642(g)(1)(B), the time for allocating the GST exemption to lifetime transfers is to be treated as if not expressly prescribed by statute. The Notice further provides that taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) under the provisions of § 301.9100-3.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Section 301.9100-3 provides the standards used to determine whether to grant an extension of time to make an election whose due date is prescribed by a regulation (and not expressly provided by statute). Under § 301.9100-1(b), a regulatory election includes an election whose due date is prescribed by a notice published in the Internal Revenue Bulletin. In accordance with § 2642(g)(1)(B) and Notice 2001-50, taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) under the provisions of § 301.9100-3.

Requests for relief under § 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government.

Section 301.9100-3(b)(1)(v) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Based on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Pursuant to § 2513, Husband and Wife consented to split the Date 2 gift. Husband and Wife are treated as the transferors for GST purposes of one-half of the entire value of the property transferred by the donor spouse, regardless of the interest the electing spouse is actually deemed to have transferred under § 2513. Taxpayers are granted an extension of time of 60 days from the date of this letter to allocate their available GST exemption to the Date 2 transfer of cash to Trust. The allocation will be effective as of the date of the transfer. The inclusion ratio of Trust will be determined based on the amount of the cash transfer to Trust and the amount of exemption allocated to the trust.

The allocations should be made on supplemental Forms 709, United States Gift (and Generation-Skipping Transfer) Tax Return for the year in which the Date 2 transfer was made, and filed with the Internal Revenue Service Center, Cincinnati, Ohio 45999. A copy of this letter should be attached to each supplemental Form 709. A copy is enclosed for this purpose.

The rulings contained in this letter are based upon information and representations submitted by the taxpayers and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Except as specifically ruled herein, no opinion is expressed or implied concerning the federal tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically we are not ruling on whether Trust will have a zero inclusion ratio as a result of Taxpayers' allocations of GST exemption to the Date 2 transfer to the trust.

This ruling is directed only to the taxpayers requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with a power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

William P. O'Shea  
Associate Chief Counsel  
(Passthroughs and Special Industries)

Enclosures

Copy for section 6110 purposes  
Copy of this letter

cc: